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No. 93-1250

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

LYLE S. CHANDLER, ADOLPHUS A. MADDOX,
and OTHERS SIMILARLY SITUATED,
Petitioners,

v.

THE CITY OF DALLAS,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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REPLY BRIEF OF PETITIONERS

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REPLY BRIEF OF PETITIONERS

Petitioners Lyle S. Chandler, Adolphus A. Maddox, and others similarly situated file this their Reply Brief.

The Respondent's Brief in Opposition reflects why this Court should grant review. The Respondent City, like the Fifth Circuit, errs in its statements of the factual record, the claims of the Petitioners, and most importantly the law as found by this Court and other courts of appeals.[1]

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[1] The Petitioners cannot here review all errors and misstatements made by the City and which largely parallel the errors made by the Fifth Circuit. Only a few of such errors are listed. Other errors are more appropriately raised in a brief on the merits. Petitioners do not waive any errors not discussed here.

I.

The Respondent City of Dallas and the Fifth Circuit state and imply, respectively, that Chandler's insulin controlled diabetes presents a safety risk if he is allowed to drive because of two specific hypoglycemic reactions and alleged other numerous reactions.[2] This statement directly contradicts the district court's factual findings based on undisputed medical evidence that Chandler's diabetes has been well controlled and that he is not a safety risk. The district court specifically noted that the two hypoglycemic reactions resulted from the City's discrimination against Chandler, not a failure of Chandler's medication or of him.[3] The City's actions in allowing Chandler to drive in the same positions from 1982 to 1985 before this suit was filed and again from 1990 to 1992 after trial also belie its statement. If Chandler's diabetes made him a safety risk, the City presumably would not have allowed him to drive. This misstatement of fact is wrong, violates the clearly erroneous rule, and is prejudicial. It impermissibly permeates and colors the Fifth Circuit's decision and the City's Brief.

The City erroneously describes demotions, repeated denials of promotions, discipline, threats of termination, and lost pay and damages exceeding $225,000.00 to petitioners alone as only an "inconvenience" and "temporary" restriction.[4] They are not.

II.

The City incorrectly attempts to characterize the Fifth Circuit's reversal as totally based on findings that the

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[2] Respondent's Brief in Opposition, pp. 5, 6, and 20; *Chandler v. City of Dallas*, 2 F.3d 1385, 1389 (5th Cir. 1993).

[3] The district court's Findings of Fact and Conclusions of Law (Findings and Conclusions), App. 45a-48a, attached to the Petition for Writ of Certiorari.

[4] Respondent's Brief, pp. 8 and 16.

district court erred in its application of law. According to the law of the case handicap and otherwise qualified status are questions of fact that must be decided by the district court and reviewed by the court of appeals under the clearly erroneous standard.[5] The district court made specific findings that Chandler and Maddox were handicapped and otherwise qualified.[6] No where does the Fifth Circuit hold that the district court erred as to findings of fact or law. It reversed by simply ignoring the district court's detailed findings of credibility, fact, and law.

The City incorrectly cites an unpublished Fifth Circuit opinion, *Collier v. City of Dallas,* No. 86-1010 (5th Cir. Aug. 19, 1986), for the proposition that persons with corrected vision better than 20/200 (Snellen) are not handicapped. *Collier* holds only that the plaintiff, whose corrected vision was agreed by all parties to be 20/30 (Snellen), was not handicapped.

The City and the Fifth Circuit also rely on dicta in *Collier* to argue that unless the City is allowed to discriminate against the handicaped it might be liable for accidents that might involve physically impaired drivers.[7] Neither dicta in an unpublished opinion nor an unsubstantiated fear is sufficient to overcome the statutory bar to discrimination against the handicapped. Even the Fifth Circuit has recognized that "the threat of injury . . . cannot be based on unfounded fears or stereotypes; it must be veritable." *Chiari v. City of League City,* 920 F.2d 311, 317 (5th. 1991).[8] Review is necessary to protect the disabled from discrimination based on prejudice and stereotype.

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[5] *Chandler v. City of Dallas,* 958 F.2d 85, 90 (5th Cir. 1992).

[6] Findings and Conclusions, App. 34a-37a, 44a-55a, 59a-62a.

[7] Respondent's Brief, p. 22; *Chandler,* 2 F.3d at 1395.

[8] *See also, School Board of Nassau County v. Arline,* 480 U.S. 273, 284-85 (1987); *Mantolete v. Bolger,* 767 F.2d 1416 (9th Cir. 1985; *Bentivegna v. Dep't of Labor,* 694 F.2d 619 (9th Cir. 1982).

Finally, the City makes the "Catch 22" argument that Petitioners have defeated their position that individualized inquiry as to their qualifications is needed by their insistence that they are disabled.[9] If the City is correct, then the disability statutes apply to no one. Any impairment severe enough to substantially limit major life activities makes the employee not otherwise qualified as a matter of law. Besides being nonsense, this assertion directly conflicts with the holdings of this Court and other courts of appeals that a plaintiff may be both handicapped and otherwise qualified. *E.g., Arline,* 480 U.S. 273; *Thornhill v. Marsh,* 866 F.2d 1182 (9th Cir. 1989); *Reynolds v. Brock,* 815 F.2d 571, 573 (9th Cir. 1987).

The attempts of the City and the court of appeals to ignore the findings of fact of the district court and disability discrimination law as found by this Court and other courts of appeals make clear the necessity for review. Without review, millions of persons with disabilities that federal statutes intended to protect from discrimination are left without protection.

CONCLUSION

A writ of certiorari should be issued and the judgment and decision of the court of appeals should be reversed.

Respectfully submitted,

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[9] Respondent's Brief, p. 21.